



POLICE DEPARTMENT

July 31, 2023

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In the Matter of the Charges and Specifications :
- against - :

Police Officer Sikander Ejaz :
Tax Registry No. 958546 :
50 Precinct :

Case No.
2021-23789

Police Officer Angel Cordero :
Tax Registry No. 952616 :
50 Precinct :

Case No.
2021-23790
----- X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Michael Riccotone, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondents, Michael Martinez, Esq.
Worth, Longworth & London, LLP
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To:
HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2021-23789

1. Said Police Officer Sikander Ejaz, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to activate his body worn camera when required to do so.

P.G. 212-123, Page 2, Paragraph 4(g)

USE OF BODY-WORN
CAMERAS

2. Said Police Officer Sikander Ejaz, while on duty and assigned to the 50 Precinct, on or about April 29, 2021, wrongfully impeded or attempted to impede an official Department investigation by omitting information or, by otherwise making misleading or inaccurate statements. *(As amended)*

P.G. 203-08, Page 1, Paragraphs 1- 4

FALSE OR MISLEADING
STATEMENTS

3. Said Police Officer Sikander Ejaz, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to make required broadcasts over the Department radio regarding the handling and disposition of an assignment. *(As amended)*

P.G. 202-23, Page 1, Paragraph 4
Page 2, Paragraph 14

RMP RECORDER

4. Said Police Officer Sikander Ejaz, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to report immediately to the patrol supervisor an unusual crime, occurrence or condition.

P.G. 202-21, Page 1, Paragraph 6

POLICE OFFICER

5. Said Police Officer Sikander Ejaz, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, used his personal cell phone to discuss official Department business while no exigent circumstances existed at the time.

P.G. 219-32, Page 1, Paragraph 1

DEPARTMENT MOBILE
DIGITAL DEVICES

6. Said Police Officer Sikander Ejaz, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to maintain his digital Activity Log, as required. *(As added)*

P.G. 202-21, Page 1, Paragraph 17

POLICE OFFICER
DUTIES AND
RESPONSIBILITIES

Disciplinary Case No. 2021-23790

1. Said Police Officer Angel Cordero, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to activate his body worn camera when required to do so.

P.G. 212-123, Page 2, Paragraph 4 (g)

USE OF BODY-WORN
CAMERAS

2. Said Police Officer Angel Cordero, while assigned to the 50 Precinct, on or about April 29, 2021, wrongfully impeded or attempted to impede an official Department investigation by omitting information or, by otherwise making misleading or inaccurate statements. (*As amended*)

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FALSE OR MISLEADING
STATEMENTS

3. Said Police Officer Angel Cordero, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to report immediately to the patrol supervisor an unusual crime, occurrence or condition.

P.G. 202-21, Page 1, Paragraph 6

POLICE OFFICER

4. Said Police Officer Angel Cordero, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, used his personal cell phone to discuss official Department business while no exigent circumstances existed at the time.

P.G. 219-32, Page 1, Paragraph 1

DEPARTMENT MOBILE
DIGITAL DEVICES

5. Said Police Officer Angel Cordero, while assigned to the 50 Precinct, on or about April 29, 2021, while on duty, failed to maintain his digital Activity Log, as required. (*As added*)

P.G. 202-21, Page 1, Paragraph 17

POLICE OFFICER

P.G. 212-08, Page 2

ACTIVITY LOGS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 15, 2023.

Respondents, through their counsel, entered pleas of Not Guilty to the charged misconduct. The Department called Lieutenant Dwayne Watson and Sergeant Scott Severino as witnesses.

Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the Tribunal finds as follows:

Disciplinary Case No. 2021-23789

I find Respondent Ejaz Not Guilty of Specifications 1, 2 and 4; and Guilty of Specifications 3, 5 and 6. I recommend a forfeiture of seven vacation days.

Disciplinary Case No. 2021-23790

I find Respondent Cordero Not Guilty of Specifications 1, 2 and 3; and Guilty of Specifications 4 and 5. I recommend a forfeiture of five vacation days.

ANALYSIS

The following is a summary of the facts which are not in dispute. On April 29, 2021, Respondents were working a midnight tour in the 50 Precinct, performing patrol duties in Response Auto #1 (T. 203). At approximately 0209 hours, they received a call from dispatch assigning them to a wellness check for a female in a green Honda, located at West 230th Street and Kingsbridge Avenue (Dept. Ex. 1). Respondent Cordero, who was the operator, drove their vehicle to that area and they conducted a brief, but unsuccessful canvass for the driver (T. 204). At approximately 0210 hours, they encountered a silver Infiniti sedan across from 316 West 231st Street (T. 138, 229; Dept. Ex. 4). The driver of the vehicle ("the motorist"), who was a male, appeared to be reclined in the driver's seat, while the car was parked approximately ten feet off the curb and the engine was running (T. 136-138).

Respondents approached the vehicle from the rear and activated their turret lights in an attempt to rouse the driver. When the driver remained motionless, Respondent Cordero used a lamp mounted near the windshield to illuminate the driver's cabin; this action also failed to rouse

the driver (T. 138). Respondents also activated their siren but that action similarly failed to rouse the driver (T. 138-39). Respondents then parked their vehicle, stepped out of it and approached the Infiniti on foot (T. 139). When they arrived at the driver's door, Respondent banged on the window for "less than two minutes" before the driver responded (T. 171).

The driver opened the door to the Infiniti and stepped into the street; Respondents escorted him to the sidewalk and began a discussion with him (T. 139-140). While both Respondents observed that the driver appeared to be very tired, neither of them perceived the smell of alcohol or marihuana coming from the driver's person (T. 140, 194, 197). They described the driver's demeanor as reticent but he did express a desire to go home and informed them that he lived in the precinct a short distance away (T. 141). The driver removed his wallet and proffered something to Respondents, which permitted Respondent Ejaz to observe a Department identification card in a windowed compartment; Ejaz also saw a Department parking placard on the Infiniti's dashboard, from which he surmised that the driver was an off-duty Member of Service (T. 141-142).

Respondents engaged the motorist for another five minutes, standing in relatively close proximity to him. During that period, they were unable to discern the scent of either alcohol or marihuana emanating from him (T. 143). At approximately 0216 hours, Respondents consulted a senior Member of Service by telephone¹ for guidance on what course of action to take with the motorist, since they agreed they did not have cause to detain him for a VTL violation but were uncertain what his status as a Member of Service might call for them to do (T. 145-146, 177). After they concluded the telephone call, the motorist again expressed a desire to go home and

¹ Respondent Cordero admitted in his testimony that he placed the call on his personal mobile telephone because that is where the phone number was saved (Tr. 208, 213).

began walking away (T. 200). Respondent Cordero then offered to drive the motorist home, and he agreed (T. 176-79, 199).

Respondents got back into their vehicle and the motorist entered the back seat. They attempted to engage the motorist in conversation but he remained uncommunicative. After driving for a couple of minutes, Respondents became increasingly concerned that the motorist's demeanor was a sign of some deeper issue they felt ill equipped to address on their own. They decided to return to the motorist's car and contact the patrol supervisor (T. 180).

Sergeant Scott Severino responded to the location and Respondents briefed him on the situation with the motorist (T. 147). They informed Severino that the motorist was an off-duty Member of Service (T. 148). Respondents asserted that they had not detected the smell of alcohol or marihuana; similarly, Severino did not detect the odor of either alcohol or marihuana coming from the motorist (*Id.*). Severino then directed the motorist to ride with him back to the 50 Precinct and for Respondent Ejaz to meet them there with the motorist's car (T. 149, 183-184).

At the 50 Precinct, Sergeant Severino contacted the Duty Captain regarding his interaction with the motorist; at the end of the telephone conversation, Sergeant Severino placed the motorist under arrest for Driving While Intoxicated and transported him to the 45 Precinct Intoxicated Driver Testing Unit ("IDTU") (T. 64). When the motorist arrived at the IDTU at approximately 0400 hours, he refused to submit to Intoxilyzer testing (T. 58, 112).

The following is a summary of the relevant evidence offered at trial.

Lieutenant Dwayne Watson

Lieutenant Watson testified that on April 29, 2021, he was assigned to investigate the circumstances leading to the arrest of the motorist for Driving While Intoxicated (T. 20). During

the course of his investigation, he learned that neither Respondent Cordero nor Respondent Ejaz had body-worn camera video pertaining to the arrest (T. 21). He obtained an ICAD document relating to a 911 call requesting assistance for a person sleeping in a green Honda Pilot (T. 22-25; Dept. Ex. 1). While this document did not name the motorist, the time and location of his arrest were noted on the ICAD (T. 25; *Id.*).

Lieutenant Watson testified that he learned through his investigation that Respondent Cordero was the operator of their police vehicle that morning and Respondent Ejaz was the recorder; in furtherance of the investigation, he acquired their Digital Activity Logs (“DAL”) (T. 26; Dept. Exs. 2, 3). He testified that their initial assignment to job number 21042901848 was at 0209 hours (T. 29; Dept. Ex. 2). While Respondent Ejaz’s DAL reflected an arrest of the motorist at 0343 hours (“one under, by Sergeant Severino, of [motorist]”), and a final disposition of 1092 Charlie, that entry was an edit made at 0344 hours (T. 29-30). Lieutenant Watson testified that his examination of Respondent Cordero’s DAL did not reveal any entries regarding that arrest (T. 30; Dept. Ex. 3).

Lieutenant Watson testified further that he acquired a copy of a surveillance video from an establishment in the vicinity of 311 West 231st Street, across from the location where Respondents Cordero and Ejaz first encountered the motorist (T. 31-32; Dept. Ex. 4).

On cross-examination, Lieutenant Watson conceded that during the course of his investigation, he learned that the original call for assistance, which had Respondents canvassing for a sleeping woman in a green Honda Pilot, was unnecessary, as they never located such a vehicle (T. 59). He conceded further that it was during the course of that canvass that Respondents happened upon a silver Infiniti with the motorist sleeping in it (*Id.*). Lieutenant Watson testified that Respondents, as well as Sergeant Severino, were consistent in their

statements that they never smelled any alcohol coming from the motorist (T. 60, 95). He also testified that Respondents' aborted attempt to drive the motorist home took approximately five minutes (T. 78).

According to Lieutenant Watson, Sergeant Severino assessed the motorist again at the 50 Precinct and still did not detect the scent of alcohol (T. 63). He confirmed that Sergeant Severino called the Duty Captain and conveyed his observations that the motorist was an off-duty sergeant who was found asleep in a car and that there was no scent of alcohol detected. Lieutenant Watson testified that it was the Duty Captain who directed that the motorist be placed under arrest for Driving While Intoxicated and taken to the IDTU (T. 64-65).

Lieutenant Watson confirmed that Sergeant Severino was the affiant on the Criminal Court complaint filed against the motorist; and that the complaint did not contain a factual assertion that anyone had detected the scent of alcohol coming from the motorist (T. 79). After having his recollection refreshed, he testified that the factual portion of the complaint contained averments regarding the motorist's grogginess and his speech (T. 80).

Lieutenant Watson testified that even though the Patrol Guide permits the recorder to make Digital Activity Log entries which the operator may adopt by reference, in the case of an arrest, both recorder and operator are required to make entries (T. 81-82).

On re-direct examination, Lieutenant Watson testified that according to his reconstruction of the timeline of events, Respondents were on scene with the motorist for "26 or 27 minutes" before they left the scene with him; he testified further that Respondents spent "30 to 35 minutes" from their initial appearance at the scene until the time they called for a supervisor (T. 91, 93). On re-cross-examination, Lieutenant Watson testified that the motorist was in the 50 Precinct for approximately 20-25 minutes until he was taken to the IDTU (T. 95).

Sergeant Scott Severino

Sergeant Severino testified that he was called to the scene of West 231st Street and Irwin Avenue at approximately 0300 hours by Respondents Ejaz and Cordero; when he arrived ten minutes later, he observed them standing on the sidewalk with the motorist (T. 103, 105). He began questioning Respondents, asking them “what they had” (*Id.*). They told Severino that the motorist did not smell like alcohol and was not driving; according to Severino, Respondents disagreed about whether the engine had been running (T. 103-04). Severino then attempted to question the motorist: he did not respond but provided Severino his identification card (T. 104). He could not smell any alcohol coming from the motorist, but since they were only “a one-minute ride” to the 50 Precinct, Severino decided to put the motorist in his vehicle to see whether he could detect the scent of alcohol on their way to the precinct (*Id.*).

Sergeant Severino testified that the motorist was dressed in comfortable clothing or “sweats” (T. 105). According to Severino, it was dark and possibly raining (*Id.*). The motorist’s car appeared to be parked safely at the scene; he denied seeing it parked ten feet from the curb (T. 105-06). Once the motorist entered Severino’s vehicle, “he yawned a lot” (T. 106). When they arrived at the precinct and the motorist stepped from Severino’s vehicle, he noticed that the motorist was moving “very, very slowly” (*Id.*). Once they entered the precinct, Severino observed under bright lighting that the motorist’s eyes appeared to be bloodshot (*Id.*).

Sergeant Severino questioned Respondents again in front of the desk, asking them whether the motorist had been driving or whether the engine was running, in order to establish intent to drive as an element of driving while intoxicated (T. 107). Respondents informed Severino that the motorist had not been driving; that the car was running; and that it was parked approximately ten feet from the curb (*Id.*). According to Severino, the lieutenant behind the desk

researched the 911 call on a computer, told Severino that the assignment had been given 45-50 minutes earlier, and that it concerned a different vehicle from the one he observed at the scene (T. 108). Severino questioned Respondents to explain the discrepancy and the time on-scene and they informed him that they canvassed for the car described in the 911 call, were unable to locate it but discovered the motorist in his vehicle "slumped over the steering wheel" (T. 108).

Severino asked Respondents how they knew the motorist was an off-duty Member of Service and they told him that they had seen a parking placard on the dashboard (*Id.*). He testified further that the time Respondents spent on-scene and the difference in the vehicles did not concern him, as it did not appear to be an excessive amount of time (T. 115).

Sergeant Severino testified that Respondents did not tell him that they had left the original scene at any point; he also testified that he did not recall speaking with them inside the Integrity Control Officer's office about their attempt to drive the motorist home (T. 109, 113). He testified that he arrived at the 50 Precinct at approximately 0320 hours and that a decision was made to arrest the motorist within ten minutes (T. 110). Severino testified further that Sergeant Boyle, the patrol supervisor that tour, transported the motorist with Police Officer Fare to the 45 Precinct IDTU (T. 110-11). He testified that after the motorist was placed under arrest, he did not have any discussions with Respondents (T. 111). According to Severino, the duty captain responded to the IDTU and called for Severino to take the motorist's arrest, rather than Sergeant Boyle; he then drove to the IDTU and witnessed the motorist's refusal of breath testing and the performance of coordination tests (T. 111-12).

Sergeant Severino testified that he accepted departmental discipline in connection with this arrest; he pled guilty to failure to remove the motorist directly to the IDTU from the scene

and for using his personal mobile phone for Department business. He testified that he accepted a proposed penalty of 18 days (T. 112-113).

On cross-examination, Severino testified that he was “100% certain” that Respondents never told him that they attempted to drive the motorist home (T. 117). When he was asked whether, in fact, Respondents had told him about the motorist being parked ten feet from the curb at the scene, rather than for the first time at the 50 Precinct, he conceded that it was possible but that he was unsure (T. 119). When confronted with his statement at the Department interview on April 29, 2021, that, “I just asked the officers what they had and they said he was parked basically in the middle of the street,” he conceded that he did not remember making the statement but did not deny the accuracy of the transcript (T. 118-21). Severino was then asked whether he remembered telling the investigators that Respondents had informed him at the scene that the motorist had been about ten feet from the curb, slouched in his seat sleeping or passed out, he testified, “I remember them telling me that he was slouched in his seat, passed out . . . [b]ut I believe – I thought that that was at the station house that they told me that” (T. 121).

Sergeant Severino acknowledged that Respondents told him that they did not detect the scent of alcohol coming from the motorist; when asked to confirm that he did not detect the scent of alcohol either, Severino testified, “I did – it was – if I did, it was very faint. I couldn’t determine it” (T. 123). When he was asked whether he had ever told investigators that there was a faint smell of alcohol, Severino recanted and testified, “Yeah, I didn’t smell – I didn’t smell alcohol” (*Id.*). When he was asked again to confirm that he never smelled alcohol, Severino testified, “Yeah, but it – I feel like he was intoxicated on – on something else. The fact that he was not comprehending and – his eyes were bloodshot” (T. 125).

When Sergeant Severino was asked whether it was true that it was not until he spoke with the duty captain that he was instructed to arrest the motorist, he testified, “Well, that’s when I made the decision to arrest him. I don’t remember – I don’t remember exactly what the duty captain said to me.” He was questioned again, “Did you make a decision to arrest him or did the duty captain say arrest him, you have enough?” Severino’s response was, “It’s possible I – yeah” (T. 126).

Sergeant Severino was questioned again as to whether he had a conversation with Respondents at the 50 Precinct in his office before the motorist was taken to the IDTU. He responded, “No,” “To the best I can recall, I didn’t have any conversations with them,” then, “I think they went with the officer to – to IDTU” (T. 129). When challenged on his supposition that Respondents went to the IDTU, Severino responded, “I thought they did. I don’t know. I don’t know where they were” (*Id.*). Finally, Severino was asked the following questions and gave the following answers:

Q. Is it fair to say you’re not sure where they were?

A. Yes, that’s fair to say.

Q. Is it possible they were in your office at some time going over what happened in the incident?

A. It’s possible. I was out at the desk and then I was going to 45. I don’t know where they were.

(T. 129-30).

On re-direct, Sergeant Severino was asked, “But are you certain you do not recall Officers Ejaz and Cordero telling you that they tried to drive [the motorist] home?” (T. 131). Severino answered, “They never told me that” (*Id.*).

Respondent Ejaz

At the 50 Precinct, Respondent Ejaz stood by the desk and Sergeant Severino placed a telephone call to the Duty Captain; he overheard Severino tell him, “Hey, cap, I don’t smell any alcohol on this guy” (T. 149-50). Once the call ended, Respondent Ejaz overheard another conversation between Severino and the midnight lieutenant regarding who was going to take the arrest (T. 151).

Sergeant Severino then directed both Respondents to go to his office; when they arrived, he took a sheet of paper and asked them, “Guys, tell me what happened” (*Id.*). Respondent Ejaz testified that he “told him everything. And I specifically mentioned to him on two occasions and two times stating that I put him in the back of the RMP, and we decided to take him home – offered him a ride to take him home (T. 151-52, 196). He clarified that Respondent Cordero was with him when he made those assertions to Sergeant Severino; once Severino had finished debriefing them, he directed them to stand by (T. 152).

Respondent Ejaz testified that there came a time that he was informed that he was going to be interviewed as a witness because the motorist had been arrested for driving while intoxicated (*Id.*). During that interview, he was accompanied by a union delegate, Police Officer Benson² (T. 153). While Respondent Ejaz asserted that he answered all the questions the investigators asked him, he acknowledged that he did not volunteer any information about driving the motorist home; he testified that he did not think it was relevant, especially since he informed Sergeant Severino and he, “didn’t make anything of it” (T. 153-54). He testified that the questions focused on the motorist’s condition – whether he was yawning, how wide his mouth was open, whether he was sleeping and how far back his chair was reclined (T. 154).

² Benson was the same Member of Service Respondents spoke with by telephone when deciding what to do with the motorist.

Respondent Ejaz testified that he was interviewed a second time but as a subject of the investigation (T. 155). As he described it, the second interview went “play by play” (*Id.*).

According to Respondent Ejaz, when he told investigators that they began the process of taking the motorist home, “the captain’s face and the lieutenant’s face kind of, you know, foundered a little bit, as if they were in shock” (T. 155-56).

Respondent Ejaz testified that he did not activate his body-worn camera because he characterized the actions he and Respondent Cordero took with respect to the motorist and in April 2021, wellness checks did not require activation (T. 157). He testified that he did not believe he was required to make a radio notification with respect to the motorist because he notified the patrol supervisor, who responded to the scene and directed them to return to the 50 Precinct, where Respondent Ejaz put himself “84” (T. 158-159). Respondent Ejaz testified further that he did notify the patrol supervisor in a timely manner because he did not have anything to report until he completed his investigation (T. 159-60).

He denied using his personal mobile telephone for Department business and explained that he used Respondent Cordero’s personal phone (T. 161). Finally, Respondent Ejaz claimed that his daily activity log was accurate, in that he did report the arrest of the motorist as “92-C” (*Id.*). He testified further that had the arrest been his, he would have entered additional information, such as pedigree and the charge for which the motorist had been arrested (T. 162).

On cross-examination, Respondent Ejaz disagreed with the characterization of his actions as a “stop,” claiming that they did not perform stops to conduct wellness checks; accordingly, they made no radio transmission, as they would have for a stop (T. 175). He conceded that when someone is placed into his police vehicle, he is supposed to make a radio notification to that

effect (T. 179). He further conceded that he did not make a radio notification that Respondents were leaving the scene of the location where they encountered the motorist (T. 181).

Respondent Ejaz testified that he had two conversations with Sergeant Severino when they returned to the 50 Precinct; the first conversation was interrupted when Severino called the Duty Captain (T. 186). He testified that during the second conversation he had with Severino, he brought up twice that he and Respondent Cordero had placed the motorist in the back of their vehicle and started to drive him home (T. 188). He detailed that Sergeant Severino took notes and asked several times about certain issues, such as whether the engine in the motorist's car was running when they encountered him (T. 188-89).

Respondent Cordero

Respondent Cordero testified that when he first observed the motorist's silver Infiniti, he pulled up next to it and used a spotlight to get the motorist's attention but was unsuccessful in doing so. He then activated his siren but that, too, did not rouse the motorist. Respondent Cordero then parked behind the Infiniti and exited his vehicle. When he walked toward the Infiniti, he observed the motorist sitting in the front seat with his seat reclined behind the pillar between the front and back seats (T. 205-06).

Respondent Cordero testified that he and Respondent Ejaz approached the vehicle from either side of the motorist's vehicle and began knocking on the window to get his attention; after knocking for approximately one minute, the motorist woke up. According to Respondent Cordero, the motorist "looked very tired" and "was yawning." After the motorist stepped out of his car, Respondent Cordero interacted with him from approximately five feet away. He testified that he did not smell either alcohol or marihuana emanating from the motorist (T. 207-08).

Respondent Cordero testified that Respondent Ejaz suggested they confer with Police Officer Benson; Cordero placed the call and handed his mobile telephone to Ejaz (T. 208). At the time Ejaz was speaking to Benson, Respondent Cordero was aware that they were dealing with an off-duty Member of Service who was tired; he testified further that he had the experience of once narrowly avoiding an accident due to fatigue after he attempted to drive home from work. When the motorist told Cordero that he wanted to go home and began walking in the direction of Irwin Avenue, he offered to drive him there (T. 208-11).

Respondent Cordero testified that once they began driving on Irwin Avenue, the motorist was “not saying much.” He explained that he and the motorist did not engage in the typical job-related banter that he had experienced in the past when encountering a fellow member of service. Respondent Cordero related that, in view of two recent suicides in his precinct, he became concerned that the motorist’s reticence might be indicative of a more serious issue; as he described it, “something didn’t seem right” (T. 211-12). He testified that he began to second-guess his decision to drive the motorist home and told Respondent Ejaz, “Maybe we should go back and get a boss” (T. 212). At that point, he and Respondent Ejaz returned to the location where they first encountered the motorist and Respondent Cordero placed a call to Police Officer Benson; Cordero conceded that he used his personal mobile phone to make that call at approximately 0242 hours (T. 213, 228). Respondent Cordero testified that at the time he made the call, he was under the impression that he was the Patrol Supervisor’s operator; in fact, Benson had been assigned to the stationhouse for that tour (T. 214). According to Cordero, Benson agreed with his assessment that a supervisor should respond to the scene and passed along his request to either the Patrol Supervisor or his operator (*Id.*).

Respondent Cordero testified that he, Respondent Ejaz and the motorist waited for the arrival of the Patrol Supervisor; Sergeant Severino and his operator eventually responded. Cordero recalled that Sergeant Severino spoke to Respondent Ejaz briefly, then spoke to the motorist for a few minutes. Sergeant Severino then instructed Respondent Ejaz to drive the motorist's car to the 50 Precinct and for Respondent Cordero to meet him there. Sergeant Severino then put the motorist in the rear of his vehicle and drove to the precinct (T. 214-15).

Respondent Cordero testified that he was in the muster room at the precinct when Respondent Ejaz returned from speaking with Sergeant Severino. According to Cordero, he asked Ejaz whether he mentioned to Severino that they had placed the motorist in the back of their vehicle and started to drive him home. When Ejaz said that he had not, Cordero suggested that they go back and tell Severino. When they returned to Sergeant Severino's office, Respondent Cordero told him that he and Respondent Ejaz had attempted to take the motorist home. Cordero testified that that was the first time he informed Sergeant Severino of that fact (T. 216-17, 224, 226-27).

Respondent Cordero testified that he was informed later that morning that he would be questioned at a Department interview as a witness; he met with investigators who asked him questions about the motorist³. Cordero testified that the investigators did not ask any questions about placing the motorist in his vehicle and he did not volunteer that fact (T. 217-19). According to Cordero, the investigators asked questions regarding the motorist's physical state and fitness for duty (T. 219). Cordero testified that approximately one month later, he was notified that he would have to appear at another Department interview, this time as a subject (T.

³ Police Officer Benson was Respondent Cordero's representative at this interview (T. 217).

219-20). At his second Department interview, Respondent Cordero claimed that he volunteered that he and Ejaz attempted to drive the motorist home to Internal Affairs investigators (T. 220).

Respondent Cordero testified that he did not activate his body-worn camera because he believed that he was conducting a wellness check on the motorist and that type of public interaction did not trigger a mandatory activation in April 2021 (T. 220-21). He testified further that he did not delay in notifying Sergeant Severino; he asserted that at no time before he called Severino did he have anything to report (T. 221). Respondent Cordero acknowledged that he used his personal mobile telephone to contact Police Officer Benson and that he would not do so in the present. He further acknowledged that he did not make Digital Activity Log entries but countered that he had the right to rely on the recorder for that tour, Respondent Ejaz, to make entries that would cover both of them (T. 222).

Credibility

I find the testimony of Lieutenant Watkins credible and logical. He is a disinterested witness whose testimony was consistent with that of an investigator who gathered relevant evidence and had no personal knowledge of the material issues in the case.

I find Respondents Cordero and Ejaz to be credible witnesses, based upon their demeanor at trial, the consistency of their respective testimonies and the lack of independent evidence which contradicted those testimonies. I am mindful that they are each interested in the outcome of this proceeding; nevertheless, the material portion of their testimonies, dealing with their observations of the motorist, were consistent with each other, as well as consistent with the testimony of Sergeant Severino on that point.

Sergeant Severino was similarly credible with respect to the observations he made of the motorist; his recollection was unreliable, however, with respect to where Respondents were

inside the 50 Precinct during a time that they testified that they were meeting with him, an issue where he initially expressed certitude. After extensive cross-examination, he admitted being mistaken in his recollection of where Respondents were, even though it was likely unflattering. While I find his testimony, as discussed further below, unreliable on that issue, I do not find that this deficiency was the result of an attempt to mislead the Tribunal. I find it more likely than not that his inability to accurately and confidently recall the material events of that meeting, as opposed to his credible observations of an off-duty Member of Service suspected of drunk driving, was his failure to create a contemporaneous memorandum to act as an aid to his recollection when testifying at a future time. I note that Sergeant Severino was not the assigned Patrol Supervisor, and was merely providing temporary relief to the assigned sergeant, when he became involved in this case.

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Specification 2: Impeding an Investigation

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent Cordero and Respondent Ejaz impeded an investigation, or that they attempted to do so, by omitting information or, by otherwise making misleading or inaccurate statements.

“An investigation is considered impeded when a member of the service makes false, misleading, and/or inaccurate statements, or engages in impeding actions” (Disciplinary Guidelines, p. 33).

“An omission is a fact material to the investigation that has been intentionally left out of the statement of the member. Not every omission can be considered misleading. The omitted fact(s) must be material and the omission must be intentional” (*Id.*). A misleading statement is

defined as “[a] statement that is intended to misdirect the fact finder, and materially alter the narrative by: intentionally omitting a material fact or facts . . .” (*Id.*). An inaccurate statement is defined as “[a] statement that the member of the service knows, or should know, includes incorrect material information. There is no intent to deceive, but rather the member’s actions are grossly negligent” (*Id.*).

A material fact is defined as “[a] significant fact that a reasonable person would recognize as relevant to, or affecting the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and where the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome” (Disciplinary Guidelines, p. 33).

The Department’s position at trial was that: (1) Respondents failed to inform Sergeant Severino and Bronx Investigations that they had attempted to drive the motorist home before returning to the location where they initially encountered him; (2) the failure to inform Severino and Bronx Investigations of that fact was material; and (3) that omission was an attempt to impede an investigation into the probability that the motorist had been driving while intoxicated.

Based upon the totality of the credible evidence, there is insufficient evidence from which to find that either Respondents, or Sergeant Severino, suspected that the motorist was driving while intoxicated. First, neither Respondent Cordero, Respondent Ejaz nor Sergeant Severino, having had the opportunity to observe the motorist at a close distance over a significant period, detected the odor of alcohol. Respondents spent approximately 32 minutes in close proximity to the motorist, first on the street and then in their vehicle. Sergeant Severino spent approximately 20 minutes with the motorist, on the street, in his vehicle and at the precinct.

While the three police officers who observed the motorist described him as looking “very tired,” that observation alone is legally insufficient to detain someone on suspicion of driving while intoxicated. There are any number of innocent explanations for a motorist sleeping in their car at 0200 hours that are not indicative of intoxication. As a Member of Service, the motorist may have worked a double shift⁴. He may have been sleep deprived because of a personal situation of which Respondents were unaware. He may have become drowsy due to medication⁵. It is not too obvious to mention that at 0200 hours, most adults are asleep, unless they have a work-related reason to be awake. While these explanations are plausible, albeit speculative, the evidence the Department offered at trial did not make any of them less likely than intoxication, for which there is insufficient evidence.

Respondent Cordero did tell investigators in the April 29, 2021, interview that while he did not believe the motorist had been driving while intoxicated, he did believe that he was too tired to permit him to get back into his vehicle and drive. He stated further that he called Sergeant Severino because he was unsure of what action to take with a Member of Service in these circumstances.

Similarly, the Department did not offer any evidence that a witness observed the motorist with an unsteady gait or slurred speech. Department investigators asked Respondent Cordero whether the motorist was unsteady on his feet after he had stepped out of his car; Cordero denied that he was. Sergeant Severino testified that the motorist moved very slowly when he stepped out of the sergeant’s vehicle at the 50 Precinct. Even if Respondents were trying to cover up for

⁴ During the April 29, 2021 interview, Respondent Cordero told investigators that he asked the motorist whether he was tired because of just coming from work but the motorist denied it, stating, “I’m just tired.”

⁵ During the April 29, 2021 interview, an investigator asked Respondent Cordero whether he had asked the motorist if he had been taking medication.

a fellow police officer who had too much to drink, as the Department suggest, they surely were not the only police officers on duty that morning who had the opportunity to observe whether the motorist displayed any of the common indicia of intoxication. The Department did not call Sergeant Severino's operator, any of the police officers on the midnight tour at the 50 Precinct, the duty captain who directed Severino to transport the motorist to the IDTU or anyone from the IDTU who conducted an evaluation of the motorist.

Second, the evidence showed that it was not until Sergeant Severino had a telephone conversation with the Duty Captain that anyone contemplated taking the motorist to IDTU. Severino's reaction to the captain's apparent command to place the motorist under arrest, "But there's no scent of alcohol on him," overheard by Respondent Ejaz, supports this finding. The motorist was not placed in handcuffs at the scene, or while he was transported in two separate police vehicles, the second of which transported him to the 50 Precinct.

Third, the Department offered no evidence to refute the credible testimony of Respondents and Sergeant Severino that they did not detect the scent of alcohol coming from the motorist. When the motorist arrived at the Intoxicated Driver Testing Unit, he refused the breathalyzer test. Thus, there is no objective evidence of intoxication from which the finder of fact can reasonably infer that at the time Respondents first encountered the motorist, it was more likely than not that he was intoxicated.

Thus, there is insufficient evidence to find that Respondents reasonably suspected the motorist had been driving while intoxicated; the evidence suggests that had they treated him as a suspect, they would have done so without a sufficient legal basis, based upon a reasonable interpretation of the facts before them. This raises an existential question: how does a Member of Service attempt to obstruct an investigation that he has no reason to believe will ensue?

Moreover, the evidence presented at trial did not establish how an alleged failure to inform Sergeant Severino that Respondents had contemplated, and then began driving the motorist home, before aborting the plan and returning him to the scene shortly thereafter, was an attempt to impede an investigation. Assuming for the sake of argument that Respondents had reasonably suspected the motorist of driving while intoxicated and had decided to drive him home, rather than place him under arrest; under those circumstances, that act would likely be sufficient proof of an attempt to impede a likely drunken driving investigation.

Returning to the case before me, according to the Department's theory of the case, in order for an omission of an aborted plan to drive the motorist home to form an element of the impeding allegation, it requires that Respondents had the state of mind to thwart an investigation they had reason to believe was likely. In this case, however, the evidence shows that Respondents, based upon their personal observations, did not believe they had sufficient evidence to suspect the motorist of drunk driving; Sergeant Severino reaching the same conclusion after his own observations of the motorist buttresses their assessment.

As a factual matter, both Respondents testified that they told Sergeant Severino about the aborted drop-off, although he denied that they told him. As I found in the credibility assessment, Sergeant Severino's recollection on this material point is unreliable. Respondent Cordero testified that after Respondent Ejaz had spoken with Severino at the precinct, he questioned Ejaz about whether he had told Severino about their attempt to drop the motorist home. He testified that he then told Ejaz that they should go back to Severino and ensure that he was aware of that fact, "because it was important."

While both Respondents conceded that they did not volunteer information about the aborted drop-off to investigators during their April 29, 2021, interview, they took the position

that the Department investigators never asked them about it. On cross-examination by the Department Advocate, Respondents each testified that in their second Department interviews, they did tell investigators about starting to drive the motorist home in response to pointed questioning.

Under these circumstances, there is insufficient evidence to establish that Respondents failed to inform either Sergeant Severino, in his debriefing of Respondents at the 50 Precinct on April 29, 2021, or to Bronx investigators later that morning, intentionally and as part of a design to thwart an investigation.

Based upon the foregoing analysis, I find Respondent Ejaz Not Guilty of Specification 2 in Disciplinary Case No. 2021-23789; I further find Respondent Cordero Not Guilty of Specification 2, in Disciplinary Case No. 2021-23790.

Disciplinary Case No. 2021-23789
Disciplinary Case No. 2021-23790
Specification 1: Failure to Activate Body-Worn Camera

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondents Cordero and Ejaz failed to activate their body worn cameras when required to do so.

Paragraph 4 of Interim Order revision to Patrol Guide procedure 212-123 (issued on 6/26/20), in effect on the date of the incident, required Members of Service to activate their Body-Worn Cameras: “prior to engaging in, or assisting another uniformed member of the service with the following police actions . . . c. [p]ublic interactions that escalate and become adversarial (I.O. rev. P.G. 212-123[4][c]). While this paragraph also mandated BWC activation for vehicle stops, the evidence in this case does not support a finding that Respondents “stopped”

the motorist's vehicle (I.O. rev. P.G. 212-123[4][g]; see *People v. Robinson*, 97 N.Y.2d 341 [2001]).

Paragraph 9 of the Interim Order directs Members of Service "[i]n the event of an unanticipated or exigent occurrence, activate the BWC as soon as it is feasible and safe to do so after taking necessary police action to preserve human health and safety" (I.O. rev. P.G. 212-123[9]).

The Interim Order permitted uniformed members of the service to record "other official activities when, "in the uniformed member's judgement, it would be beneficial to record, so long as it is not one of the prohibited recordings described in step '13'" (I.O. rev. P.G. 212-123[11]). Among the prohibited recordings are the "[p]erformance of administrative duties or non-enforcement functions" (I.O. rev. P.G. 212-123[13][a]).

The credible, relevant evidence in the record does not establish that Respondents: (1) were involved in an engagement with the public which had escalated and became adversarial; (2) had stopped the motorist's vehicle; or (3) were in an exigent occurrence. I, therefore, find that they were not required to activate their body-worn cameras.

As discussed above, Respondents came upon the motorist by happenstance and there was nothing objectively unusual about the circumstances, but for the status of the motorist as an off-duty Member of Service. Based upon the Department's theory of the case, the Respondents chose not to activate their body-worn cameras in order to avoid collecting incriminating evidence of the motorist's intoxication. This argument calls for the Tribunal to speculate that Respondents had this conscious design, despite the lack of evidence suggesting that the motorist was intoxicated. Based upon the lack of evidence, the argument lacks merit.

Accordingly, I find Respondent Ejaz Not Guilty of Specification 1 in Disciplinary Case No. 2021-23789; I further find Respondent Cordero Not Guilty of Specification 1 in Disciplinary Case No. 2021-23790.

Disciplinary Case No. 2021-23789, Specification 4
Disciplinary Case No. 2021-23790, Specification 3
Failure to Report Unusual Occurrence

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondents Cordero and Ejaz failed to report immediately to the patrol supervisor an unusual crime, occurrence or condition.

The totality of the evidence in this case supports a finding that Respondents were uncertain of how to assess their encounter with the motorist. He was found in a car with the engine running, parked awkwardly, at approximately 0200 hours. Their first attempts to rouse him were unsuccessful and it took some time to bring him to alertness. In many situations, those observations might reasonably lead a police officer to suspect that the driver operated the vehicle while inebriated; in this case, however, none of the common indicia of intoxication were observed by either Respondent. What they did observe was that the motorist appeared to be fatigued, a surmise that he confirmed verbally.

In the absence of probable cause that the motorist had committed a traffic infraction, Respondents had no legal authority to detain him (*see People v. Robinson, supra*). When they discerned through their questioning that he was an off-duty Member of Service, they were faced with a situation for which they apparently had no ready response and sought advice from Police Officer Benson, whom they believed (incorrectly) was the Patrol Supervisor's operator. It is clear that the motorist's status as Member of Service was not a substitute for probable cause; yet,

Respondents still sought clarification from a more seasoned Member of Service as to what obligations they might have which did not occur to them.

I find it more likely than not that Respondents consulted Benson because they were genuinely uncertain about the proper course of action to take, rather than motivated to enlist his assistance in impeding an investigation. I make this finding mindful that if Benson believed Respondents had probable cause to effect an arrest for drunk driving, by advising them to drive the motorist home he was exposing himself to Departmental discipline.

I further find that it was not until Respondents second-guessed their course of action and became concerned that there was some element of the motorist's affect that was "just off," that they believed they had what could reasonably be considered an unusual occurrence, requiring notification of a supervisor. That they made their notification some 32 minutes after they first encountered the motorist, according to the Department's evidence, that fact, in and of itself, does not render their notification untimely. I find that the notification they made after returning to the location where they first encountered the motorist was in accordance with their obligations under the Patrol Guide.

Accordingly, I find Respondent Ejaz Not Guilty of Specification 4, in Disciplinary Case No. 2021-23789; I further find Respondent Cordero Not Guilty of Specification 3, in Disciplinary Case No. 2021-23790.

Disciplinary Case No. 2021-23789
Specification 3: Failure to Make Required Broadcast

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Ejaz failed to make a required broadcast over the Department radio regarding the handling and disposition of an assignment.

It is undisputed that Respondent Ejaz was the Recorder during his tour of duty on April 29, 2021 (T. 26, 138). The Member of Service performing the duties of recorder in a radio motor patrol unit is responsible for monitoring the radio and making all necessary transmissions (P.G. 202-03[4]). Patrol Guide procedure 202-03 further requires the recorder to “[t]ransmit disposition or interim disposition to radio dispatcher immediately upon completion of assignment and before leaving the scene of assignment” (P.G. 202-03[6]).

Based upon the totality of the evidence, I find that Respondent Ejaz should have initiated a radio transmission to advise the dispatcher that he and Respondent Cordero had disengaged from the search for the green Honda which was the subject of the 911 call. After receiving a 911 call at 0209 hours, the first official contact they made with their chain of command was at 0242 hours, when they asked Police Officer Benson to have the Patrol Supervisor respond. While Respondents did communicate with Benson at 0216 hours to seek his advice, they spent approximately 32 minutes performing duties of which their chain of command was not fully informed. During the same period, the command had every reason to believe that Respondents were still working on their assignment at West 230th Street and Kingsbridge Avenue, instead of several blocks away in front of 311 West 231st Street.

As a matter of efficiency and officer safety, it is important that Members of Service keep their chain of command informed of their whereabouts. Accordingly, the Patrol Guide requires officers on patrol to advise the dispatcher when they have completed an assigned task and when they are free to accept other assignments.

Patrol Guide procedure 202-03 also requires the recorder to “[n]otify radio dispatcher of the presence of a non-member of the service (e.g., prisoner, complainant, witness, abandoned child, emotionally disturbed person, etc.), the time entering the RMP, their gender and the

beginning mileage” (P.G. 202-03[3]). Patrol Guide 202-02 requires the operator in a radio motor patrol unit to “[p]ermit only uniformed members of the service performing related police duty to enter or ride in a radio motor patrol car on patrol” (P.G. 202-02[5]). While the motorist was indeed a Member of Service, and the stated purpose for which Respondents placed him in the back of their RMP was benevolent, prudence should have led Respondents to inform the dispatcher of his presence.

Based upon the foregoing, I find Respondent Ejaz Guilty of Specification 3 in Disciplinary Case No. 2021-23789.

Disciplinary Case No. 2021-23789, Specification 5
Disciplinary Case No. 2021-23790, Specification 4
Use of Personal Cell Phone for Department Business

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondents Cordero and Ejaz used a personal cell phone for Department business.

Patrol Guide procedure 219-32 directs Members of Service to “[u]se Department issued mobile devices for official Department business exclusively” and prohibits the use of “any other cellular telephone/smartphone/tablet (e.g., personal device, etc.) to conduct official Department business (P.G. 219-32[1, 1(a)]).

Respondent Cordero admitted that he used his personal mobile telephone to contact Police Officer Benson (T. 213, 228). Respondent Ejaz also admitted that he spoke to Benson on Respondent Cordero’s personal phone after Cordero had dialed Benson’s number (T. 146). Inasmuch as their conversations, both to consult Benson as to what course of action to take with respect to the motorist, and later to summon the Patrol Supervisor, concerned Department business, they should have communicated with him on either of their Department phones, in

accordance with Patrol Guide procedure 219-32, rather than Respondent Cordero's personal phone.

Accordingly, I find Respondent Ejaz Guilty of Specification 5, in Disciplinary Case No. 2021-23789; I further find Respondent Cordero Guilty of Specification 4, in Disciplinary Case No. 2021-23790.

Disciplinary Case No. 2021-23789, Specification 6
Disciplinary Case No. 2021-23790, Specification 5
Failure to Maintain Digital Activity Log

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondents Cordero and Ejaz failed to maintain their Digital Activity Logs.

The relevant portion of Department's Exhibit 2, Respondent Ejaz's Digital Activity Log, reflects an entry pertaining to a 911 call, job number 21042901848, directing Respondents to West 230th Street and Kingsbridge Avenue (Dept. Ex. 2). The entry commences at 0209 hours and terminates at 0344 hours (*Id.*). In the comments under that job, Respondent Ejaz entered, "One under by Sgt. Severino. [the motorist]" (*Id.*).

Respondents testified credibly that the initial call, relating to a sleeping, female driver of a green Honda at West 230th Street and Kingsbridge Avenue, was unfounded. They testified further that shortly after reaching that conclusion, they encountered the motorist opposite 311 West 231st Street *after* they had given up the search for the green Honda. Accordingly, the arrest of the motorist should have been noted under a separate entry, whether or not the arrest was eventually assigned to Respondents, since their actions in response to the 911 call and their unanticipated encounter with the motorist were unrelated.

Based upon the foregoing, I find Respondent Ejaz Guilty of Specification 6 in Disciplinary Case No. 2021-23789; I further find Respondent Cordero Guilty of Specification 5 in Disciplinary Case No. 2021-23790.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondents' employment histories were examined (*See* 38 RCNY § 15-07). Information from Respondents' personnel records that was considered in making this penalty recommendation is contained in attached memoranda.

Respondents have been found Guilty of failure to maintain their Digital Activity Logs and using a personal phone to discuss Department business. In addition, Respondent Ejaz has been found Guilty of failure to make a necessary radio transmission.

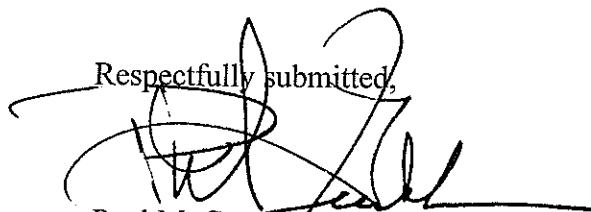
Each of the infractions for which Respondent has been found Guilty are classified as Schedule "A" command disciplines: failure to make a proper notification, omitted Activity Log entries and using an electronic device while on duty (Disciplinary Guidelines, pp. 52-53).

The totality of the evidence in this case supports the imposition of a sanction which will promote greater efficiency and attention to detail, rather than punishing a lack of integrity. I found no credible evidence to support a finding that Respondents attempted to perform any act to improperly benefit themselves or the motorist. I do find that their actions were likely motivated by a fraternal duty of care for the motorist, rather than an attempt to assist him avoid accountability for his supposed misconduct.

Accordingly, I recommend that Respondent Cordero forfeit five vacation days for each of the two specifications of which he was found Guilty, the penalties to run concurrently with each other.

With respect to Respondent Ejaz, I recommend the forfeiture of five vacation days for failing to maintain his Digital Activity Log and for using an electronic device while on duty, each penalty to run concurrently with each other. I recommend a further penalty of two vacation days for failing to make a required radio broadcast, to run consecutively to the five days imposed for the other two specifications of which he has been found Guilty, for a total of seven vacation days.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

DEC 15 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER SIKANDER EJAZ
TAX REGISTRY NO. 958546
DISCIPLINARY CASE NO. 2021-23789

Respondent was appointed to the Department on July 8, 2015. On his three most recent performance evaluations, he was rated “Exceeds Expectations” for 2020 and 2021, and “Meets Standards” for 2022.

Respondent has no disciplinary history. In December 2022, he was placed on Level 1 Discipline Monitoring; monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ANGEL CORDERO
TAX REGISTRY NO. 952616
DISCIPLINARY CASE NO. 2021-23790

Respondent was appointed to the Department on July 11, 2012. On his three most recent annual performance evaluations, he was rated “Meets Standards” for 2019, 2020, and 2021.

Respondent has no formal disciplinary history. In March 2023, he was placed on Level 1 Discipline Monitoring; monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials